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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted] **Public Copy**

File: NYC 214 F 1176 Office: New York, New York Date: MAY 24 2001

IN RE: Petitioner: [redacted]

Petition: Petition for Approval of School for Attendance by Nonimmigrant Students Under Section 101(a)(15)(F)(i) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(F)(i)

IN BEHALF OF PETITIONER:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The Petition for Approval of School for Attendance by Nonimmigrant Students (Form I-17) was denied by the District Director, New York, New York. The matter is now before the Associate Commissioner for Examinations on appeal. The decision of the director will be withdrawn and the matter remanded to him for further consideration and action.

The petitioner is a private institution which provides training which may lead to a certificate in eurythmy, an "artistic movement discipline." Pursuant to section 101(a)(15)(F) of the Immigration and Nationality Act (the Act), the petitioner seeks continuation of its approval as a school for attendance by nonimmigrant alien students. After the director issued a notice of intent to deny, the director denied the petition. The director stated that the petitioner is accredited by an international entity, but not by a national, regional, or local agency. The director also noted that the petitioner had submitted a copy of a letter dated September 13, 1982, from the New York State Education Department, Bureau of Veterans Education, which stated that the petitioner was "approved for the training of veterans and other eligible persons in accordance with the provisions of Section 1776, Title 38, U.S. Code." However, the director concluded that the letter did not meet the regulatory requirement under the provisions of 38 U.S.C. 3675 and 3676.

On appeal, counsel for the petitioner states that the director erred in failing to recognize the petitioning school as a "conservatory," and that the director failed to recognize the petitioner's accreditation by the New York State Department of Education, Bureau of Veteran's Affairs.

The record reflects that the petitioner was originally approved for the attendance of students under section 101(a)(15)(F) of the Act on March 20, 1984. The petitioner was issued a Form I-516 approval notice which stated that the school was approved for the attendance of M-1 vocational students. In a letter dated August 27, 1984, the director informed the petitioner that the previous Form I-516 approval notice had been issued with several errors. The director issued a new Form I-516 with the school's correct file number and noting that the school was approved for the attendance of F-1 academic students. Subsequently, after the school filed a petition for the continuation of the previous approval, the director reaffirmed the school's initial approval on November 18, 1986. However, as the petitioner had indicated on the petition that they were seeking approval for the attendance of vocational students under section 101(a)(15)(M) of the Act, the director reaffirmed the approval as a school which instructs M-1 students.

In June 1999, upon review of the petitioning institution for continued eligibility, the director determined that there was a question regarding the school's eligibility for the attendance of

F-1 academic students. Pursuant to 8 C.F.R. 214.3(h), the director instructed the petitioning entity to file a new Form I-17, Petition for Approval of School for Attendance by Nonimmigrant Students, in order to determine whether it continued to meet the eligibility requirements. Upon review of the petition, the district director determined that the petitioning institution had not established that it was an accredited school. However, instead of commencing proceedings under 8 C.F.R. 214.4(b) to withdraw the school's previously accorded approval, the director issued a notice of intent to deny and ultimately denied the petition pursuant to 8 C.F.R. 214.3, as if the petitioner had not been previously granted approval.

The regulation at 8 C.F.R. 214.4(b) states:

> Whenever a district director has reason to believe that an approved school or school system in his/her district is no longer entitled to approval, a proceeding shall be commenced by service upon its designated official a notice of intention to withdraw the approval. The notice shall inform the designated official of the school or school system of the grounds upon which it is intended to withdraw its approval. The notice shall also inform the school or school system that it may, within 30 days of the date of service of the notice, submit written representations under oath supported by documentary evidence setting forth reasons why the approval should not be withdrawn and that the school or school system may, at the time of filing the answer, request in writing an interview before the district director in support of the written answer.

Although the director accorded the petitioner with a process similar to that provided under 8 CFR 214.4, the petitioner must be granted the proper proceeding, with all of the attendant rights and consequences, if the director intends to withdraw the school's previously accorded approval.

It is further noted for the record that the petitioning school has submitted a letter from the New York State Education Department, Bureau of Veterans Education, which states that the petitioner was "approved for the training of veterans and other eligible persons in accordance with the provisions of Section 1776, Title 38, U.S. Code."[1] However, as the letter is dated September 13, 1982, almost nineteen years prior to the present proceeding, it is questionable whether the school continues to be eligible to conduct courses

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[1] Section 1775 and 1776 of Title 38 of the United States Code was renumbered as 3675 and 3676, respectively, by the 1991 amendments to the law. See Pub.L. 102-83, § 5(a).

deemed appropriate for veterans under the provisions of 38 U.S.C. 3675 and 3676. If the petitioning entity seeks to establish that it is certified to conduct courses for veterans, in lieu of accreditation, it must submit a current statement of recognition signed by the appropriate official of the State approving agency who shall certify that he or she is authorized to do so. See 8 C.F.R. 214.3(b).

The decision of the director will be withdrawn and the matter will be remanded so that the director may comply with the above regulation. After completion of the review, if the district director finds that the petitioning institution is unable to meet the eligibility requirements, he shall enter a new decision which will be certified to the Associate Commissioner for review.

ORDER: The decision of the district director is withdrawn. The matter is remanded to him for further action consistent with the foregoing discussion and entry of a new decision which, if adverse to the applicant, is to be certified to the Associate Commissioner for review.